IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2007

CORAM:

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

CRP.PD.NOS.130 and 131 of 2006
AND
CMP.NOS.1278 AND 1279 OF 2006

J.K.S.Edger Wesely ...Petitioner in CRP.PD.No.130/06

Jeyamani Wesely ...Petitioner in CRP.PD.No.131/06

Vs.

1.Nesarajan
2.S.Rambabu
3.Anand ...Respondent in both CRP.s

Respondents 2 and 3 given up.

Civil Revision petitions filed under Section115 of the Code of Cvil procedure 1908 against the judgment and order dated 30.11.2005 of the XVIII Assistant Judge, City Civil Court at Chennai in I.A.No.2229 and 2230 of 2005 in O.S.Nos.1461 and 1462 of 2004 respectively.

For Petitioner :Mr.A.S.Narsimhan

For Respondent No.1:No appearance.

O R D E R

These Civil Revision Petitions have been filed against the orders dated 30.11.2005 made in I.A.Nos.2229 and 2230 of 2005 in O.S.Ns.1461 and 1462 of 2004 respectively praying to strike off the name of the first respondent in these revisions from the suit wherein he was arrayed as defendant No.3. The trial Court allowed the above applications on the premise that the petitioners have not made out any case and that the first respondent herein is having some interest in the suit property and allowed the applications thereby striking off the name of the first respondent herein who had been arrayed as third defendant in the respective suits. The correctness of the said orders are challenged before this Court.

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2. I have heard the learned counsel for the petitioner.

3. Though notice has been served on the first respondent neither a counsel is appeared nor the first respondent appeared before this Court in person.

4. I have perused the materials available on record.

5. From the materials, it is clear that the petitioners herein filed the suit seeking for the relief of injunction against defendants 1 to 3 from interfering with the petitioners' peaceful possession and enjoyment of the suit till the expiry of the lease period as per the lease deed dated 12.11.2003 executed between the petitioners and the first defendant in the suit, according to the petitioners, he is the broker. It is the case of the petitioners that when the petitioner in CRP.No.130 of 2006 searching for a residential building for lease, he happened to see an advertisement in the Tamil daily 'Dina Thanthi' dated 9.11.2003 that two bed room flat at Chakravarthy Nagar, Ayanavaram, Chennai 600 023 is available for lease. In the said advertisement, contact phone number of the first defendant has been given and pursuant to which he contacted the first defendant who gave advertisement and the first defendant has stated that the second defendant Ram Babu is the owner of the building who gave a power of attorney to grant lease to him for the residential premises . After perusing the papers of power of attorney, after satisfying themselves, the petitioners negotiated with the first defendant and taken the disputed property on lease by executing lease deed on 12.11.2003 with the first defendant. The second defendant is the owner of the property, the third defendant is the builder/promoter of the said property. When the petitioners are in possession and enjoyment of the property, all of a sudden, defendants 1 to 3 wanted the petitioner to vacate the premises in order to give the premise to third party and they were prepared to give the lease amount, which has been objected to. All the respondents have threatened the petitioners and with this cause of action as stated in paragraph 11, the petitioners filed the suit.

6. On the very same line of reasoning, petitioners filed an applications for interim injunction in I.A.Nos.5843 and 5844 of 2004 in the suit in O.S.No.1451 of 2005. In the injunction applications, the builder/promoter has filed counter admitting the fact that he has built the property pursuant to the agreement entered into between him and the owner of the property and handed over possession to the owner. The first defendant with whom he entered into an agreement remained exparte. The owner of the property has stated by filing a counter affidavit that he has been cheated by the broker the first defendant contended that he is nothing to do with the lease agreement and he has never given any power of attorney to the broker. While the injunction applications are kept pending, with this pleading, the builder Nesarajan filed I.A.No.2229 and 2230 of 2006 to strike off his name from the cases, as he is nothing to do with the dispute between the parties under Order 1 Rule 10(2) CPC. The trial Court after hearing the parties allowed the application without

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passing any order in the injunction application.

7. The correctness of the said order is canvassed in this revision. Upon perusing the material on record, though the builder has come out with the stand that he is nothing to do with the dispute between the parties and he has handed over possession immediately after the construction was over and contended that he is unnecessary party, but with regard to the allegation of threat by the defendants, there is absolutely no reasoning given by the trial Court. While allowing the application, the mere statement of the builder that he is nothing to do with the property has been accepted and on the said reasoning, the Court held that the petitioners have not made out a case by giving any material to connect the builder to the ownership or interest over the property and thereby allowing the applications cannot be regarded as legally correct.

8. Though wide discretion has been given under Order 1 Rule 10 (2) of C.P.C., the discretion has to be exercised in a judicious manner, in the sense, the discretion should not be exercised to the detriment of the plaintiff, being the dominus litis. The Court has to take into consideration the facts pleaded, the grievance of the plaintiff and the allegation made against the defendants and thereupon arrive at a finding whether the third defendant is a necessary party to the suit. In this case, the plaintiff parted with huge amount as lease amount to the first defendant, a broker, who caused publication in the Daily by giving his name and phone number as person authorised to lease out the premises and leased out the property. The real owner-second defendant simply says that the first defendant, the broker has cheated the second defendant and disowned the advertisement and disputed the right of the first defendant to lease out the premises. The third defendant, the builder, of course, apparently says that he has no interest over the property. However, there is no acceptable explanation from him to the allegation that when he has no interest in the property and handed over the same immediately after construction being a builder, what made him to join with the defendants No.1 and 2 to threaten the plaintiff for eviction from the disputed property. The silence on the part of the third defendant about the act of wielding out threat against the plaintiffs the petitioner herein, creates a suspicion in the mind of the Court against the builder-third defendant. Atleast for determination of the point for grant of injunction, when a specific allegation is made against him that he along with the first defendant threatened the petitioner to get the petitioner evicted from the property, this Court is of the view that everything is not right and apparent on the part of the third defendant and in order to determine the point as to the right of the petitioner to have a decree of injunction, particularly, when a specific allegation is made against him, he should be in the array of the defendants. The order of dismissing the suit as against the third defendant to that extent is liable to be set aside. The respondents took the risk of remaining exparte before this Court.

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9. For the above reasoning, the Civil Revision Petitions are allowed. No costs Consequently, CMP.Nos.1278 and 1279 of 2006 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

To
1. The XVIII Asst. Judge, City Civil Court, at Chennai.

+ 2 CCs to Mr.A.S.Narasimhan, Advocate SR NO 17275, 17276

CRP.PD.NOS.130 and 131 of 2006
AND
CMP.NOS.1278 AND 1279 OF 2006

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